

## Texas courts on driver license

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Claude D.CAMPBELL, Appellant,

v.

The STATE of Texas, Appellee.

No. 27245.

Court of Criminal Appeals of Texas.

Jan. 12, 1985

Defendant was convicted of unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended. The County Court, Panola County, Clifford S. Roe, J., rendered judgment, and an appeal was taken. The Court of Criminal Appeals, Belcher, C., held that proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

Judgment reversed and cause remanded.

### 1. Automobiles Key 353

Upon a charge of operating- a motor vehicle upon a public highway while operator's license is suspended, the state has burden of showing that defendant had been issued an operator's license to drive a motor vehicle upon a public highway, that such license has been suspended, and that, while such license was suspended, defendant drove a motor vehicle upon a public highway.

### 2. Automobiles Key 352

Proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

### 3. Automobiles Key 136

There is in Texas no such license as a "driver's license."

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No attorney on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted, in the County Court Panola County, for unlawfully operating- a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of \$25.

[1]Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was at suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his license was suspended

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[2, 3]"This proof is insufficient to 'sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a

driver's license known to our law. *Hassell v. State*, 149 Tex. Cr. R. 333, 194 S.W.2d 400; *Holloway v. State*, 155 Tex. Cr. R. 484, 237 S.W. 2d 303; and *Brooks v. State*, Tex. Cr. App., 258 S.W.2d 317.

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.

Page - 360 Tex.

Frank John CALLAS, Appellant,  
v.  
STATE of Texas, Appellee.

No. 30094.

Court of Criminal Appeals of Texas.

Jan. 7. 1959.

Prosecution for driving motor vehicle on public road after operator's license had been suspended. The County Court at Law, Potter County, Mary Lou Robinson, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Woodley, J., held that where testimony showed that only two persons were in or around truck at time defendant was apprehended and patrolman testified that the other person was not the driver of truck, and largely upon this testimony jury found defendant guilty, and after jury retired police officer filed complaint charging other person with driving motor vehicle with violation of restrictions imposed on his operator's license and such other person was convicted upon his plea of guilty, defendant's motion for new trial setting forth conviction of such other person should have been granted in order that defendant might have the benefit of evidence regarding conviction of other party in another trial.

Reversed and remanded.

Criminal Law Key 938(1)

In prosecution for driving after operator's license had been suspended where testimony showed that there were only two persons including defendant in or around truck at time patrolman reached it and patrolman testified that other person was not driving panel truck, and after jury retired patrolman filed complaint charging other party with driving motor vehicle and he was convicted upon his plea of guilty, defendant's motion for new trial should have been granted in order that he might, in another trial, have the benefit of evidence regarding conviction of other party. *Vernon's Ann. Civ. St. art. 6687b, § 1(n)*.

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McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst. County Atty., Amarillo, State's Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road "after the Texas Operator's License of the said Frank John Callas had \*\*\*been suspended" and further alleged that appellant had received an extended period, of suspension "of said Texas Operator's License\*\*\* "and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b. Sec. 1 (n), *Vernon's Ann. Civ. St.*

This Court has held that there is no such license known to Texas law as a "driver's license". See *Hassell v. State*, 149 Tex. Cr. R. 333, 194 S.W.2d 400; *Brooks v. State*, 158 Tex. Cr. R. 546, 258 S.W.2d 317.

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that Schaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driving [Page - Tex 361] a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and Schaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant's motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded

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**BROOKS v. STATE.**

No. 26458.

Court of Criminal Appeals of Texas.

May 27, 1953

From a judgment rendered by the County Court, Culberson County, defendant appealed. The Court of Criminal Appeals, Belcher, C. held that information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense.

Reversed with directions.

Automobiles Key 351

Information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense. Vernon's Ann. Civ. St. art. 6687b, § 27.

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George W. Walker, Van Horn, for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of \$50.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully drive and operate a motor vehicle upon a public [Page - Tex. 318] highway, to-wit: U. S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended."

In *Hassell v. State*, 149 Tex.Cr.R. 333, 194 S.W.2d 400, 401, we said:

"There being no such license as a 'driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense." See also *Holloway v. State*, Tex.Cr.App., 237 S.W.2d 303.

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

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**HASELL v. STATE.**

No. 23353.

Court of Criminal Appeals of Texas.

May 15,

1. Automobiles Key I37

Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or chauffeur is not required to have an operator's license. Vernon's Ann.Civ. St. art. 6687b, §§2,3,44.

2. Automobiles Key 351

Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators' commercial operators' and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

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Commissioners' Decision.

Appeal from Hunt County Court; Wm. C. Parker, Judge.

W. Lee Hassell was convicted of operating a motor vehicle upon a highway without a license, and he appeals.

Reversed and prosecution ordered dismissed.

G. C. Harris, of Greenville, for appellant.

Ernest S. Goens, State's Atty., of Austin, for the State.

DAVIDSON, Judge.

The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of \$50.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State. Sec. 2 of Article II of the Act reads as follows:

"Drivers must have license.

"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

"(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty for the violation.

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[1]It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, to wit. State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

[2]Only three types of licenses are authorized or required under the Act. These are "operators," "commercial operators," and "chauffeurs," and they are specially defined in the Act. The term "driver"—as used in the Act—is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

PER CURIAM.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

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